



THE COURT OF APPEAL – UNAPPROVED

Appeal Number: 20228/67

**Whelan J.
Binchy J.
Allen J.**

Neutral Citation Number [2023] IECA 186

IN THE MATTER OF THE EMPLOYMENT EQUALITY ACT, 1998

AND

IN THE MATTER OF THE EQUALITY ACT, 2003

AND

IN THE MATTER OF THE WORKPLACE RELATIONS ACT, 2015

BETWEEN/

OLUMIDE SMITH

APPELLANT

- AND -

CISCO SYSTEMS INTERNETWORKING (IRELAND) LIMITED

RESPONDENT

RULING of Mr. Justice Binchy delivered on the 21st day of July 2023

1. On 16th March 2023, at the commencement of his appeal against the judgment and order of the High Court (Meenan J.) of 17th February 2022, Mr. Smith applied that Allen J. and I recuse ourselves from hearing his appeal on a number of grounds that are addressed in detail in judgments delivered by each of my colleagues today. I have read and considered each of those judgments, and I am in full agreement with the detailed and comprehensive

analysis of the issues raised by Mr. Smith's recusal application, and the conclusions reached by each of my colleagues.

2. One of the principal grounds for his application was that Mr. Smith had made complaints to the Judicial Conduct Committee of the Judicial Council in relation to both Allen J. and me pursuant to s. 50 of the Judicial Council Act 2019 ("the Act"). In my own case, Mr. Smith had lodged two complaints. In the first case, the complaint had been lodged on 5th January 2023, and in a determination made on 13th January 2023, the Registrar to the Judicial Conduct Committee held that that complaint did not meet the admissibility requirements set out in s. 53 of the Act. Mr. Smith sought a review of that determination by the Complaints Review Committee of the Judicial Council, and that review was still pending on 16th March when Mr. Smith's appeal in these proceedings was listed for hearing before this panel of the Court.

3. The second complaint advanced by Mr. Smith against me was made by him on 1st March 2023 and as of 16th March 2023, had not been determined by the Registrar. Accordingly, it is apparent that both complaints, while at different stages in the process, were outstanding as of the date on which this panel sat to hear Mr. Smith's substantive appeal in these proceedings on 16th March 2023.

4. Subsequently, the Registrar, on 29th March 2023 held that Mr. Smith's second complaint against me did not meet the admissibility requirements set out in s. 53 of the Act. Mr. Smith also sought a review of that determination. On 15th June 2023, the Complaints Review Committee issued its determinations in respect of each of the reviews requested by Mr. Smith, and in each case the Complaints Review Committee determined that the complaint was not admissible under the provisions of s. 53 of the Act.

5. It follows that insofar as Mr. Smith has grounded his application for my recusal upon the complaints that he has made against me, the basis of his application has now fallen away,

unless the mere fact of his having made such complaints requires that I should recuse myself from participating in the hearing of his appeal. That question is considered in detail in each of the judgments of my colleagues, and for the reasons given in each of their judgments (with which, as I have said, I am in full agreement) each of them has concluded that the mere fact of the making of a complaint to the Judicial Conduct Committee could not, in and of itself, require a judge to recuse himself/herself from proceedings.

6. Nonetheless, as is apparent from the judgments of both Whelan J. and Allen J., since the recusal application, on the one hand, and the complaints made by Mr. Smith to the Judicial Conduct Committee, on the other, are entirely separate and distinct matters involving separate and distinct processes, it is necessary that I should consider whether or not the facts relied upon by Mr. Smith in each of his complaints are such as to cause “...*a reasonable person in the circumstances [to] have a reasonable apprehension that the [appellant] would not have a fair hearing from an impartial judge on the issue.*” (per Denham J. in *Bula Limited v. Tara Mines Limited (No. 6)* [2000] 4 I.R. 412 as cited by Whelan J. in her judgment on this application (at para. 45). In the same passage, Denham J. continued: “*The test does not invoke the apprehension of the judge or judges. Nor does it invoke the apprehension of any party. It is an objective test – it invokes the apprehension of the reasonable person*”.

7. By his first complaint, the appellant makes generalised allegations of prejudice, bias, racism and discriminatory conduct, both against me and against the panel of the Court which sat on 17th October 2022 in his appeal in the proceedings *Olumide Smith v. Cisco Systems Internet Working (Ireland) Limited*. He alleged that I “*applied different rules to comparable situations*” and “*applied [mis-applied] same rule to different situations and disproportionately failed to apply the rule of law in breach of ...*” various authorities to which he refers. He refers to “*The Court of Appeal’s atrocities on 16 July 2021, 6 May*

2022, 21 July 2022, 22 July 2022, 29 July 2022, 7 October 2022 and 13 October 2022 that were extended into further acts of victimisation, unfair and discriminatory treatment on the ground of racial or ethnic origin and failure to apply the rule of law on 17 October 2022”.

However, notwithstanding the very serious nature of these allegations, Mr. Smith, in his complaint, provided no particulars at all of anything that was allegedly said or done such as to give rise to any reasonable apprehension in the mind of the reasonable observer, acquainted with all of the facts, that there was any substance to the appellant’s accusations of prejudice and racist bias.

8. In the second of his complaints, being the complaint made by the appellant on 1st March 2023, I am unable to identify any complaint. Mr. Smith merely asserts that: *“there are human rights abuses with the construction and composition of a prejudiced panel of three presiding judges that shall hear the substantive Employment Equality Acts 1998 to 2011 matter :Olumide Smith v Cisco Systems Internetworking (Ireland) Limited [The Court of Appeal Record Number: 2022/67] that comprise Mr. Justice Donald Binchy who I filed prior complaints against”*. Thus, to the extent that this is a complaint at all, it appears to be one objecting to my sitting on this panel for the purpose of this appeal.

9. It follows therefore that since, for the reasons articulated by Whelan J. and Allen J. in their judgments, the mere making of a complaint against a judge cannot in and of itself be sufficient for a judge to recuse him or herself from proceedings, and since the allegations made by the appellant against me in his two complaints contain no details at all of any conduct complained of, that the appellant has advanced no grounds such as to give rise to any apprehensions in the mind of the reasonable observer that he will not receive an impartial hearing.

10. I therefore refuse his application that I should recuse myself from the proceedings.

11. Since this ruling is being delivered remotely, Whelan J. and Allen J. have authorised me to indicate their agreement with it.